

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 18  
Federal Office Building  
212 Third Avenue South, Suite 200  
Minneapolis, MN 55401-2657

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Christian Labor Association (River City Asphalt),

CASE 18-CB-280058

**POSITION STATEMENT**

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To: Rachael M. Simon-Miller, Field Attorney:

The Christian Labor Association, for its POSITION STATEMENT to the July 19, 2021 alleged Charge, respectfully submits the following:

- 1 The Union did not fail to engage in timely contract bargaining with the employer, resulting in a lockout and loss of wages for a bargaining unit employee.**

For a timeline of CBA negotiations, please refer to CLA 0000064.

On March 25, 2021 the Union (hereinafter "CLA") presented its CBA Bargaining Proposal to the Employer (CLA 000002). A Reply to the CLA Proposal was received from Employer on April 16, 2021 and forwarded to (b) (6), (b) (7)(C) for the CLA bargaining unit employees (BUE). (CLA 0000003 to 000004).

On April 20, 2021, (b) (6), (b) (7)(C) forwarded the BUE's Response to the Employer's Reply. (CLA000004 to 000006).

On April 22, 2021, the CLA provided the BUE's Response to the Employer. (CLA 000007 to CLA 000008).

On Friday, April 30, 2021, at 10:26 PM, in a seven (7) minute phone conversation (b) (6), (b) (7)(C) advised the CLA via telephone that the BUEs had accepted the Employer's counterproposal. (See, CLA 000086)

On Friday, April 30, 2021 at within 3 minutes of talking to (b) (6), (b) (7)(C), at 10:38 PM the CLA advised the Employer the BUE's had accepted the Employer's offer and would draft a contract for signature (CLA 000011).

On Saturday, May 1, 2021 at 11:44 AM (b) (6), (b) (7)(C) forwarded to the CLA an e-mail (CLA 000014) (b) (6) and other BUE's (but not the CLA) had received from the Employer at 5:21 PM on April 30, 2021 that stated:

Due to the CLA contract expiring tonight at 11 :59pm, and no response from the CLA, RCA has no choice but to park its trucks until contract is complete. CLA employees will not receive dispatch orders until a contract is reached. Any questions need to be directed to union steward and Joni with CLA.

At 4:02 PM on Saturday, May 1, 2021, the CLA for a second time advised the Employer that the BUE's had accepted the Employer's counteroffer the previous day, April 30, 2021. (CLA 000015 and CLA 000159 (corrected copy of CLA 000015).

For all previous 8 (f) CBA's negotiated between the CLA and the Employer, (2015, 2016, 2017, and 2019) the Employer had never parked trucks until a new CBA was signed. (CLA 000064 to 000076).

The evidence reflects that Union did not fail to engage in timely contract bargaining with the employer resulting in a lockout and loss of wages for a bargaining unit employee. Although (b) (6), (b) (7)(C) was notified on April 30, 2021, the Employer would park its truck until the contract was completed, (b) (6) did not forward that e-mail to the CLA until the following day, May 1, 2021, nor did (b) (6) mention it in (b) (6) phone conversations with the CLA (Ms. Tulenchik). Within three (3) minutes of being told on April 30, 2021 the BUEs accepted the Employer's last counterproposal, the CLA prepared an e-mail to the Employer advising the Employer of the acceptance of its last counterproposal.

The charge should be dismissed as the evidence does not support the allegations that the CLA failed to engage in timely contract bargaining with the employer, resulting in a lockout and loss of wages for a bargaining unit employee.

**2. The Union did not fail and did not refuse to process grievances of employee, (b) (6), (b) (7)(C), for arbitrary or discriminatory reasons or in bad faith.**

(b) (6), (b) (7)(C) filed grievances with the Employer without notice to or consulting with the CLA.

Upon notification of a grievance filed by (b) (6), (b) (7)(C), usually from the Employer, the CLA considered (b) (6), (b) (7)(C) grievances under the language of the CBA and the Employer's response to the grievance. The CLA took the action based upon the facts and the employer's response. In no case was the action of the CLA arbitrary, discriminatory, or in bad faith.

(b) (6), (b) (7)(C) has identified no protected class under which (b) (6) claims (b) (6) was a member for which (b) (6) was subject to discrimination. In the absence of such information, there is no evidence of discrimination based on a protected class.

The Union considered each of (b) (6), (b) (7)(C) alleged grievances and the Employer's responses. It decided one grievance had potential merit and eventually requested arbitration for what would amount to one- or two-day's wages for (b) (6), (b) (7)(C) if the arbitration were successful. In light of the potential cost of arbitration, both for the arbitrator's fees and for counsel's fees, and the minimal amount of recovery in comparison to the cost to obtain any recovery, the CLA withdrew its request for arbitration upon advice of its counsel. The withdrawal of the request for arbitration was neither arbitrary or in bad faith.

The alleged charge that the CLA used arbitrary or bad faith reasons regarding (b) (6), (b) (7)(C) alleged grievances should be dismissed.

**3. The Union did not fail to respond within a reasonable period of time to the phone calls and messages of bargaining unit employees,**

(b) (6), (b) (7)(C) has identified no phone calls or messages of bargaining unit employees for which (b) (6) alleges (b) (6) or other bargaining unit employees did not receive a timely response. In the absence of such information, it is impossible to respond to an allegation. However, the CLA has filed a listing of its phone

calls and text messages, and further identified those which it had with (b) (6), (b) (7)(C). See CLA 000077 to 000110 and CLA 000112 to 000145.

There is no evidence that the CLA failed to respond within a reasonable period of time to any phone calls or messages of (b) (6), (b) (7)(C) or other bargaining unit employees. This alleged charge should be dismissed.

Dated: August 23, 2021

**FRYBERGER LAW FIRM**

*s/ Donald C. Erickson*

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***Attorneys for Charged Party,  
Christian Labor Association***



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

**IN THE MATTER OF**

**Christian Labor Association (River City Asphalt)**

**Case 18-CB-280058**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them at the Christian Labor Association offices in Brainerd, Minnesota. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting. Further, if the Charged Party maintains bulletin boards at the facility of the Employer where the alleged unfair labor practices occurred, the Charged Party shall also post Notices on each such bulletin board during the posting period. If the Union's place of business is currently closed due to the Coronavirus pandemic, the 60 consecutive day period for posting will begin when the Union's place of business reopens. The Regional Director will send copies of the signed Notices to the Employer whose employees are involved in this case, and request that the Notices be posted in prominent places in the Employer's facility for 60 consecutive days from the date of posting.

**E-MAILING NOTICE** - The Charged Party will email a copy of the signed Notice in English, and in additional languages if the Regional Director decides that it is appropriate, to all employees represented by the Christian Labor Association who work at the River City Asphalt facility located at 8800 West Hwy 101 Frontage Road, Shakopee, MN 55379. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees and Members to you pursuant to a Settlement Agreement approved by the Regional Director of Region 18 of the National Labor Relations Board in Case 18-CB-280058." If the Union's place of business is currently closed due to the Coronavirus pandemic, the Union will email the copy of the Notice to its employees when the Union's place of business reopens. To document its compliance with this requirement, the Charged Party will e-file a copy of its distribution e-mail, with all of the recipients' e-mail addresses visible, along with a copy of the attached Notice and a fully completed Certification of Posting form, via the Agency's e-filing portal at [www.nlr.gov](http://www.nlr.gov).

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees and Members made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor



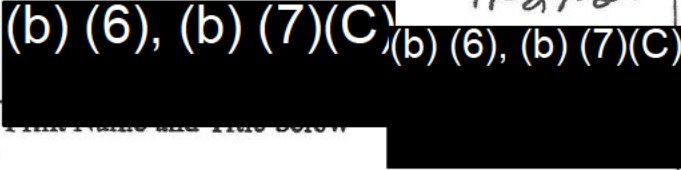
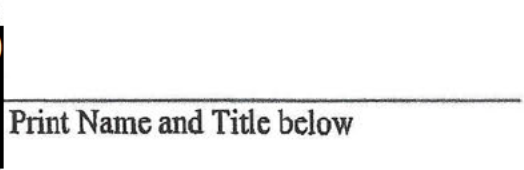
Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes (b) (6), (b) (7)(C) Initials      No \_\_\_\_\_ Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director. The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees and Members, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees and Members. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> <b>Christian Labor Association</b>			<b>Charging Party</b> <b>(b) (6), (b) (7)(C)</b>		
By:	Name and Title	Date	By:	Name and Title	Date
	(b) (6), (b) (7)(C)	11-29-21			
					
Print Name and Title below			Print Name and Title below		
<b>Recommended By:</b> <b>Rachael Simon-Miller</b> Field Attorney			<b>Approved By:</b> <b>JENNIFER A. HADSALL</b> Regional Director, Region 18		
Date Digitally signed by Rachael Simon-Miller Date: 2021.12.15 11:29:54 -06'00'			Date		



*(To be printed and posted on official Board notice form)*

As you may know, Lee Jastram filed a charge with the National Labor Relations Board against the Christian Labor Association (the Union) alleging that we violated the National Labor Relations Act. The charge has been investigated and settled. As part of this Settlement Agreement, we have agreed to post and e-mail this Notice.

**THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** restrain or coerce you in the exercise of the above rights.

**WE WILL NOT** fail to handle or arbitrarily drop grievances for (b) (6), (b) (7)(C) or any other employee because they tried to enforce the contract, or in retaliation for union activity, or for any other unfair, arbitrary or discriminatory reasons.

**WE WILL NOT** coerce and interrogate you about whether you support the grievances filed by other employees.

**WE WILL NOT** follow directions from the company to interrogate you about grievances filed on your behalf, including whether you support the filing of such grievances.

**WE WILL NOT** tell employees that we cannot talk to them or represent them because they filed an NLRB charge against the Union.

**WE WILL NOT** in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

**Christian Labor Association**

(Labor Organization)

(b) (6), (b) (7)(C)

Dated: 11-29-21

By

(b) (6), (b) (7)(C)

(Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's*

*Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

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Yes \_\_\_\_\_ No \_\_\_\_\_  
Initials Initials

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By:	Name and Title	Date	By:	Name and Title	Date
			(b) (6), (b) (7)(C)		12-10-21
Print Name and Title below			(b) (6), (b) (7)(C)		
			(b) (6), (b) (7)(C)		
Recommended By:			Approved By:		
<b>Rachael Simon-Miller</b> <small>Digitally signed by Rachael Simon-Miller Date: 2021.12.15 11:33:10 -06'00'</small> <b>RACHAEL M. SIMON-MILLER</b> Field Attorney			<b>JENNIFER A. HADSALL</b> Regional Director, Region 18		



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**Christian Labor Association**

(Labor Organization)

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Representative) (Title)

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